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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, SAL CATALDO, JULIAN SANTIAGO, and SUSAN LYNN HARVEY, individually and on behalf of all other similarly situated,
 	
        Plaintiffs,
 	
        v.
 	
GOOGLE LLC,
 	
        Defendant.
	Case No.: 3:20-cv-4688-RS
	
	PLAINTIFFS' OPPOSITION TO GOOGLE'S MOTION *IN LIMINE* 19 (DKT. 657)
	
	Judge: Hon. Richard Seeborg
	Trial Date: August 18, 2025

1   Plaintiffs respectfully request that the Court deny Google's MIL #19 (Dkt. 657, the

2 "Motion"). In closing, Plaintiffs have no intention to go beyond the bounds of what is appropriate

3 and supported by the evidence. *See United States v. Sayetsitty*, 107 F.3d 1405, 1409 (9th Cir. 1997)

4 (attorneys are given "wide latitude . . . in closing argument"); *Stankewitz v. Woodford*, 365 F.3d

5 706, 721 n.9 (9th Cir. 2004) ("Counsel has wide latitude to craft a closing argument" (citations and

6 quotation marks omitted)). Ignoring Google's rhetoric, for the three categories identified by

7 Google, there is evidence in the record where the parties can fairly and appropriately present their

8 closing arguments.

9   *First*, in Plaintiffs' initial argument to the extent data breaches come up at all, it will be to

10 illustrate the risks Google imposed on users by collecting and saving their sWAA-off data without

11 their permission. Google put this topic at issue by first mentioning data breaches in its opening

12 statement (Trial Tr. 252:17–21), then through cross of Mr. Santiago (Trial Tr. 546:6–9 ("Q. We're

13 not here in this case about a data leak or a data breach; correct? You understand this case has

14 nothing to do with that; yes? A. Google's had data leaks")). Further, on direct examination, Google

15 elicited testimony from its corporate representative Steve Ganem suggesting that "[t]here's not data

16 breaches associated with Google." Trial Tr. 1145:4–12. Google does not dispute these risks, and

17 they are supported by evidence in the record. *See* Trial Tr. 711:11–16 (Hochman Cross: Q. "And

18 you say that in your mind, there is a privacy risk that data, like the toxic data that we saw that is

19 sent to Google, could be hacked or leaked; right? That's a privacy risk?" A. "Yes. There's always

20 some risk. There's no system that's perfectly secure."). Google employee Bryan Horling stated

21 that the "main privacy challenge that user[s] face today" is that their data "could be leaked and [he]

22 can't control it." PX-6 p. 31. Regardless of whether there has been a breach, this evidence is

23 relevant to, for example, whether Google's conduct was highly offensive. Plaintiffs should be

24 permitted to reference this and other similar evidence in closing. If Google voices the issue in its

25 argument, Plaintiffs will, of course, respond based on the evidence in the record.

26   *Second*, the evidence confirms that Google can reidentify users based on their sWAA-off

27 data and produce this data in response to a government subpoena. *See, e.g.*, G0929 p. 1 ("Sawmill

28   1

1   data is sensitive and potentially reidentifiable even after the scrubbing described here."); *see also*

2   PX-11 p. 1 (describing "joinability risks" of linking (s)WAA-off data to users and "[h]aving to

3   retrieve" this data in response to "Subpoena"); PX-6 p. 13, 66, 67 (Google employee concerns about

4   "Government surveillance").[1]   Google's representative Ganem agreed "that users, if they knew that

5   you had this de-identified information that could be reidentified, that they would be concerned that

6   you might do that in response to a subpoena." Tr. 1243:19–1244:1 (Ganem, responding "I imagine

7   so"). Those concerns could include "a woman in a state that prohibits abortions," where the person

8   "wouldn't want [her] information subject to a possible subpoena." Tr. 1244:2–8 (Ganem,

9   answering "I can imagine so" after Court overruled objection). These concerns are real, supported

10 by evidence in the record, all of which came in without objection or after an objection was

11 overruled. Plaintiffs may ask the jury to consider the evidence to determine whether Google's

12 conduct was highly offensive, and whether Plaintiffs suffered loss or damage as a result of the

13 taking of their data.

14   ***Third***, there is relevant AI-related evidence in the record that may be fairly discussed in

15 closing. The evidence at trial included, for example, the admission by Google's representative

16 Ganem that Google uses sWAA-off data "to inform machine learning models." Trial Tr. 1195:18–

17 1196:1. A Google Firebase presentation confirms that one part of the "value for Google ads" with

18 "Firebase Analytics" was "In-app data to inform UAC machine learning models" (PX-163 p. 30).

19 Mr. Ganem testified that "UAC" stands for "universal app campaigns" and confirmed that the data

20 Google gets for "UAC machine learning models is important to Google." Trial Tr. 1197:14–25.

21 Google's counsel suggested that he would ask Mr. Ganem to testify that the data "has never been

22 provided to the AI Department at Google" (Trial Tr. 720:10–13), but Google's counsel never asked

23 Mr. Ganem that question. Google's technical expert Dr. Black himself described Google's use of

24 this data as "like ChatGPT," a popular and widely known AI tool. Trial Tr. 1731:13–19. While he

25 testified that Dr. Hochman did not identify evidence that Google built conversion models with

26

27 [1] When questioned by Google's counsel, Mr. Ganem testified that the proposal in PX-11 was not adopted. Trial Tr. 1247:12–14. However, PX-11 on its face states that this proposal was "really expanding the ability, not creating it." PX-11 p. 1.

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sWAA-off data (Trial Tr. 1731:20–23), Dr. Black admitted that Google does model conversions with a "ChatGPT kind of AI technology" that is "based on sWAA-on data" that can "tell you if you get a batch of sWAA-off data, roughly what percentage of those are conversions based on an ad campaign even though you don't know for sure." Trial Tr. 1731:13–19. When asked whether Google can "use machine learning to reidentify de-identified data," Dr. Black responded "Potentially." Trial Tr. 1749:22–1750:7.

Dr. Hochman also testified regarding how Google "uses the data to train AI" where Google's advertising system "heavily utilizes machine learning in order to be able to do predictions about which ads a person is going to respond to" and with "automated bidding that's driven by machine learning" where "all this data feeds into that AI use." Trial Tr. 632:6–12. When asked whether Google uses the data for AI, Dr. Hochman explained how "Google has, for many years, had machine learning as part of its systems" and "the AI in, especially machine learning, needs data to make predictions." Trial Tr. 636:16–637:3. That is consistent with PX-163. This AI training is for Google's benefit, because "it's their AI." Trial Tr. 637:9–16 (Hochman). While Dr. Hochman confirmed that he was not talking about Gemini, he also testified to how there's "a lot of machine learning in Google's systems" and "Google has deployed AI in a bunch of different ways." Trial Tr. 719:2–23.

Plaintiffs respectfully ask that the Court deny Google's MIL #19.

Dated: September 1, 2025   Respectfully submitted,

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